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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 30, 1998

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street N.W. Room 544
Washington D.C. 20554

Re: Comments of Sprint Corporation in CC Docket No. 96-115

Dear Ms. Myles:

Enclosed herewith is a 3.5 inch diskette containing the Comments of Sprint Corporation in the above-referenced proceeding. If you have any questions, please call me at 828-7438.

Respectfully submitted,

Michael B. Fingerhut
General Attorney

Enclosure

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use	)	
Of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	

COMMENTS OF SPRINT CORPORATION

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March 30, 1998

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SUMMARY

The Commission should not adopt its proposal to deprive carriers of their limited rights under Section 222(c)(1)(A) and (B) to use, without first obtaining their customers' permission, the CPNI that they derive in the provision of services to such customers. Such proposal is contrary to the balance that Congress has attempted to reach in Section 222 between the competitive needs of carriers and consumer privacy interests with respect to CPNI. This balance enables customers to control information they view as sensitive and personal from use, disclosure and access by carriers, but at the same time, affords carriers the limited right to the use of such CPNI without first obtaining their customers' permission in order to market improved services and provide customer care.

Sprint strongly supports the Commission's conclusion that "Congress' goals of promoting competition and preserving customer privacy will be furthered by protecting the competitively-sensitive information of other carriers ... from network providers that gain access to such information through their provision of wholesale services." The fact that LECs obtain competitively-sensitive data from the IXCs in their provision of wholesale services presents a substantial risk that the LECs will misappropriate such data for their own use. Such

risk increases as the LECs enter the interexchange market and seek to exploit whatever advantages they may have including access to commercially sensitive data of their IXC competitors. Because the opportunities for abuse here are rife, Sprint believes that the Commission must establish a program to help ensure that carriers comply with their duty to protect the confidentiality of information obtained from other carriers in the provision of services.

Congress' goals here are also furthered by declaring that a carrier cannot claim that customer information it receives from another carrier in the provision of a non-common carrier service is CPNI within the meaning of Section 222. The need for such a declaration arises because certain LECs have arrogated for their own marketing use databases containing proprietary long distance customer information furnished it by Sprint and other IXCs under billing and collection agreements and have sought to defend such action by claiming that the information was CPNI and that it had obtained customer approval to use it. Allowing a LEC to misappropriate IXC's billing databases would enable them to "piggy-back" on the efforts of IXCs. This, in turn, would give them an undue advantage as they entered the long distance market and would be contrary to the Commission's responsibility under the Act to promote fair competition.

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	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its comments on the Commission's *Further Notice of Proposed Rulemaking* (*FNPRM*), FCC 98-27, released February 26, 1998, in the above-referenced proceeding.[1]

I. THE PROPOSAL TO RESTRICT THE CARRIER'S STATUTORY RIGHT TO USE CERTAIN CUSTOMER PROPRIETARY NETWORK INFORMATION WITHOUT CUSTOMER APPROVAL SHOULD NOT BE ADOPTED.

In its *Second Report,* the Commission recognizes that the customer proprietary network information ("CPNI") obtained by carriers in their provision of telecommunications services to their customers is critical to their ability "to market improved service within the parameters of the customer-carrier relationship." *Id.* at ¶24. The Commission also recognizes that

[1]The FNPRM was issued as part of the Commission's *Second Report and Order* (*Second Report*) in this proceeding.

"[w]ith Section 222, Congress expressly directs a balance of both competitive and consumer privacy interests with respect to CPNI." *Id.* at ¶3 (internal quotation marks and footnote omitted). Thus, the Commission finds that Section 222 establishes a framework for ensuring that customers are "able to control information they view as sensitive and personal from use, disclosure and access by carriers," *id.*, but at the same time, affords carriers a limited right in Section 222(c)(1)(A) and (B) to use the CPNI they derive "in the context of the customer-carrier relationship" without the necessity of first seeking customer approval. *Id.* at ¶23.

The proposal on which the Commission has asked for comments here would do away with Congress' carefully drawn balance. Carriers would be deprived of their limited rights under Section 222(c)(1)(A) and (B) to use, without first obtaining their customers' permission, the CPNI that they derive in the provision of services to such customers. As a result, the ability of carriers to efficiently market new and improved services within the existing service relationships with such customers would be problematic.

The Commission claims that Section 222 "is silent on whether a customer has the right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the circumstances defined by subsections

222(c)(1)(A) and (B)." But, it opines that such right can be read into "the privacy protection in section 222(a) which imposes on every telecommunications carrier 'a duty to protect the confidentiality of proprietary information of, and relating to...customers...," as well as by the principle of customer control implicitly embodied in section 222(c)." *FNRPM* at ¶205. Sprint respectfully disagrees.

Presumably, if Congress had intended that Section 222 be interpreted as the Commission suggests here, it would have not afforded carriers the right to use CPNI in the limited circumstances set forth in Section 222(c)(1)(A) and (B). There would have been no need to do so since customers would have the absolute right to control access to their CPNI and carriers would have no say in the matter. But, Congress chose not to give customers such right and instead enacted a provision that seeks to reasonably meet the privacy expectations of customers as well as the marketing and customer care needs of competitive carriers. Indeed, the Commission has explicitly found that "Congress established a comprehensive new framework in section 222, which balances principles of privacy and competition in connection with the use and disclosure of CPNI and other customer information." *Second Report* at ¶14. Adopting a rule that would enable customers "to restrict all marketing uses of

CPNI," *FNPRM* at ¶205, would destroy this carefully crafted framework.

Moreover, there does not appear to be any compelling reason to read the carriers' limited right to use their customers' CPNI without first obtaining approval as set forth in Section 222(c)(1)(A) and (B) out of the Act. Certainly, the Commission does not cite any evidence in the *FNPRM* demonstrating that customers consider carrier use of any and all CPNI to be an invasion of their privacy. On the contrary and based on its "historical understanding of customer preferences as well as the present record," *Second Report* at fn. 98, the Commission is "persuaded that customers expect that CPNI generated from their entire service will be used by their carrier to market improved service within the parameters of the customer-carrier relationship." *Id.* at ¶24.

Given the fact that "the customer is aware that its carrier has access to CPNI," *id.*, and expects that its carrier will use the information "to market improved service," there is no benefit to eliminating the ability of carriers to access and use CPNI as provided for under Section 222(c)(1)(A) and (B). Conversely, a carrier would likely have to expend considerable resources to modify its systems and create firewalls so that it could restrict or even prevent access to CPNI derived from its own customers in the normal course of providing service. To

make matters worse, once the firewalls were in place, it would be extremely difficult, if not impossible, for a marketing representative to access a customer's CPNI even if during a phone call the customer gave his permission to use his CPNI. And, in any event, if a customer does not want to receive marketing calls from his carrier, he can always request to be added to the carrier's "do not call" list.

Sprint believes that in some instances, customers may not fully understand the impacts of restricting access to and use of their own CPNI, thinking that such restriction would only eliminate telemarketing calls. In fact, restricting carrier access and use of its customers' CPNI could severely limit the carrier's ability to efficiently market key services that may benefit the customer financially and in terms of convenience.

In sum, the Commission should not adopt any rule that would eliminate the ability of carriers to access and use their customers' CPNI derived within the context of the existing carrier-customer relationship without first obtaining customer permission. Such a rule is at odds with Congressional intent as plainly reflected in Section 222.

II. THE COMMISSION MUST DECLARE THAT A CARRIER CANNOT USE CUSTOMER PROPRIETARY INFORMATION OBTAINED FROM ANOTHER CARRIER FOR ITS OWN MARKETING PURPOSES.

Sprint strongly supports the Commission's conclusion that "Congress' goals of promoting competition and preserving

customer privacy will be furthered by protecting the competitively-sensitive information of other carriers ... from network providers that gain access to such information through their provision of wholesale services." *FNPRM* at ¶206. As the Commission notes, "Congress expressly protected carrier information in section 222(a), as well as in the specific limitations on the use of that information in section 222(b)." *Id.*

The fact that LECs obtain competitively-sensitive data from the IXCs in their provision of wholesale services presents a substantial risk that the LECs will misappropriate such data for their own use. Such risk increases as the LECs enter the interexchange market and seek to exploit whatever advantages they may have including access to commercially sensitive data of their IXC competitors. Because the opportunities for abuse here are rife, Sprint believes that the Commission must establish a program to help ensure that carriers comply with their duty to protect the confidentiality of information obtained from other carriers in the provision of services. Such a compliance program should include, at a minimum, a requirement that each carrier institute a training program to instruct its personnel that they have a responsibility not to use competitively-sensitive information obtained from other carriers for any purpose other than the one for which the information was

furnished; a requirement that each carrier institute a disciplinary process for violations of such responsibility; a requirement that each carrier have a supervisory review process; and, a requirement that each carrier have a corporate officer file an annual certification of compliance. Any carrier violating its duty to protect competitively-sensitive information obtained from another carrier should be subject to maximum fines permitted under statute and any other penalties warranted by the nature of the offense.

The "goals of promoting competition and preserving customer privacy" are also furthered by declaring, in clear and unequivocal terms, that a carrier cannot claim that customer information it receives from another carrier in the provision of a non-common carrier service is CPNI within the meaning of Section 222. The need for such a declaration arises because certain LECs have arrogated for their own marketing use databases containing proprietary long distance customer information furnished it by Sprint and other IXCs under billing and collection agreements.[2] Although these LECs only acquired long distance customer information because of their provision of billing services under contract, they have sought to defend such

[2]Sprint has expended considerable resources in developing billing databases which enable it to provide to its LEC billing and collection agents, in a cost-effective manner, the data necessary to enable such LECs to bill Sprint's customers.

action by claiming that the information was CPNI and that it had obtained customer approval to use it.[3]

Sprint, of course, recognizes that certain customer billing information is included within the definition of CPNI, 47 U.S.C. §222(f)(1)(B), and that end user customers can authorize the disclosure of such information to any person designated by the customer. 47 U.S.C. §222(c)(2). Sprint would furnish its customer's raw billing information to such entities if authorized to do so by such customer. The carrier receiving such information would then have to undertake the expense of organizing the raw data into a format for its own use.

On the other hand, an end user customer cannot authorize the LEC to use for marketing purposes a database of billing information that an IXC has expended considerable resources to develop. The fact that such database contains customer billing information does not make it CPNI within the meaning of Section 222 and a customer cannot authorize the use of such databases by a LEC.[4] This would not only violate the terms and conditions of the billing agreements but also Section 222(a).

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[3]Sprint, AT&T and MCI are suing one such LEC -- Pacific Bell -- in United States District Court for the Northern District of California for the misuse of the information supplied under their billing and collection agreements. *AT&T Communications of California, Inc., et al. v. Pacific Bell, et al.*, Consolidated Action No. C 96-1691-SBA.

[4]Sprint doubts that a LEC would turn over its databases of its customers' CPNI to Sprint even if Sprint had obtained authorization from the LEC's customers to receive the information contained in the databases.

Sprint respectfully requests that the Commission declare that the use of IXC billing databases by a LEC for purposes other than billing violates Section 222(a). Any other interpretation would enable the LEC furnishing billing and collection services, to avoid the necessity and expense of compiling and organizing customers' CPNI into a database for marketing purposes and instead would enable them to "piggy-back" on the efforts of IXCs. This, in turn, would give them an undue advantage as they entered the long distance market and would be contrary to the Commission's responsibility under the Act to promote fair competition.

Respectfully submitted,

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March 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 30th day of March, 1998 to the parties on the attached list.

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March 30, 1998

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